

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIRST REGION**

In the Matter of

SIX FLAGS NEW ENGLAND, INC.

Employer

and

NEW ENGLAND REGIONAL COUNCIL
OF CARPENTERS

Petitioner

Case 1-RC-21889

DECISION¹

¹ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing and in its post-hearing brief, the Employer asserted that the Regional Director improperly ordered the parties to provide additional evidence regarding the supervisory status of the supervisors at issue here during a second day of hearing, although the Petitioner, who bears the burden of proving supervisory status, did not request to introduce additional evidence. The Employer also asserted that the Regional Director improperly failed to provide written notice that the supervisory issue would be revisited at the resumed hearing. Finally, the Employer asserted that the Regional Director's decision to seek further evidence created the appearance of bias, that she should, therefore, recuse herself, and that the matter should be removed to another region or the Board. Because I have not found any of the individuals in dispute to be a statutory supervisor, I find it unnecessary to comment on the Employer's assertions. I note, however, that the supervisory status issue in this matter is shared in common with the unfair labor practice charge filed by the Petitioner in Case 1-CA-42447, which is currently pending in the Regional office. See NLRB Casehandling Manual, Part 2, Section 11731.3. In view of the pendency of this and other unfair labor practice charges filed by the Petitioner against the Employer, I have not included a Direction of Election in this Decision and the case otherwise remains in blocked status. See Casehandling Manual, Part 2, Section 11730.

The Petitioner seeks to represent a unit of about 35 maintenance department employees employed by Six Flags New England, Inc. at its amusement park in Agawam, Massachusetts.² The Petitioner maintains that seven supervisors in the maintenance department are statutory supervisors who should be excluded from the unit, while Six Flags asserts that these seven individuals are nonsupervisory employees.³ I find that six of the maintenance department supervisors -- Tom Prejsner, Steve Ferrisi, and Brett Smith in the mechanical shop, Michael Fleury and Al D'Amours in the electrical shop, and Scott Moquin in the carpentry shop -- are nonsupervisory employees. I find that the record is insufficient to determine whether supervisor Chris Ardizoni exercises statutory authority with respect to seasonal employees. Accordingly, I shall permit him to vote in the election under challenge.

Background

The Six Flags amusement park is open from the end of April to late September or early October each year. It employs both year-round and seasonal employees. Charles Davis is the Director of Maintenance and Construction for Six Flags. He is responsible for overseeing the maintenance of the park's physical plant, including its buildings, grounds, rides, walkways, and utilities. His department has three divisions, ride maintenance, facilities, and paint and signs, each of which has its own manager.

Jeff Bissonette is the manager for the ride maintenance division, which has both a ride maintenance group and an electrical group. Roch Picard is the assistant manager in charge of the ride maintenance group, which includes ride mechanics who maintain the park's roller coasters and other attractions. This group employs three supervisors, Tom Prejsner, Brett Smith, and Steve Ferrisi, who oversee approximately 17 employees in the

As to appeal rights with respect to the decision to maintain this case in blocked status, under the provisions of Section 102.71(b) of the Board's Rules and Regulations, any party may obtain review of this determination by filing a request for review with the Board in Washington in accordance with the provisions of Section 102.71(c) of the Rules and Regulations. A request for review must be filed with the Board in Washington, DC, and a copy filed with the Regional Director and copies served on all other parties within 14 days of service of the notification contained in this Decision that the petition is to remain in blocked status.

I further find that: 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

² At the outset of the hearing, the Petitioner requested to amend its petition to add seasonal employees in the maintenance department, but it later withdrew that request.

³ The Petitioner has indicated its willingness to proceed to an election that includes these individuals should I find them to be nonsupervisory employees.

classifications of Mechanic A and Mechanic B. This group also employs supervisor Chris Ardizoni and water technician Ronald Mesick, who maintain the facility's water park, and approximately five seasonal employees who assist them when the park is open.

The ride maintenance group has divided the park in half for purposes of work assignments. Brett Smith is currently the supervisor for the northern end. It appears that Tom Prejsner and Steve Ferrisi are the supervisors for the southern end.⁴ The record is unclear as to whether each mechanic reports to a particular half of the park and/or to a particular supervisor.⁵

Don Donahue is the assistant manager in charge of the electrical group. His group includes supervisors Michael Fleury⁶ and Al D'Amours, as well as five electricians.

The facilities division includes groups for carpentry, plumbing and landscaping, and communications. It appears that Dave Jenks is the manager of the facilities division. The carpentry group includes the position of assistant manager, which is currently vacant, carpentry supervisor Scott Moquin, and five employees in the classifications of carpenter A and carpenter B. Assistant manager Bill Mahoney oversees a group composed of a licensed plumber, an apprentice plumber, and a landscape employee. Brian Sherlin is the assistant manager for the communications department, which employs two communications technicians. There are no individuals with the title of "supervisor" in the plumbing/landscaping or communications group.

Finally, Manager Jerry Johnson oversees the paint and signs division, which includes a sign painter and two regular painters. There are no assistant managers or supervisors in this division.⁷

⁴ Ferrisi testified that he will help with a ride in the northern end if asked to, but his primary area is the southern end.

⁵ Davis testified that the mechanics work on rides within "that area." Mechanic Al Legare testified that he normally works in the northern end and that Brett Smith is now his immediate supervisor, but that Ferrisi has pulled him off jobs to do assignments. Mechanic Todd Dumas testified that Prejsner and Ferrisi are his immediate supervisors, but that Smith and Piquette have also assigned him to ride calls. Mechanic Robert Farris testified that his immediate supervisor is Smith, that Prejsner is the supervisor who primarily directs his work, and that Smith, Prejsner, or Ferrisi direct his work.

⁶ Davis testified that there is a Mechanic A named Mike Fleury. Presumably this is a different individual from the Michael Fleury who is a supervisor in the electrical group and whose supervisory status is in dispute.

⁷ The parties have stipulated, and I find, that Charles Davis, Jeff Bissonette, Roch Picard, Don Donahue, David Jenks, Bill Mahoney, Brian Sherlin, and Jerry Johnson are statutory supervisors who should be excluded from any unit found appropriate.

Indicia of Supervisory Status

The Petitioner asserts that the seven supervisors are statutory supervisors by virtue of their authority to hire, assign work and direct employees, schedule employees, assign overtime, discipline, adjust grievances, and reward employees, and because their title is “supervisor.”

Hiring⁸

Mechanic Todd Dumas testified that he was hired almost three years ago by former supervisor Kevin Piquette.⁹ Piquette brought Dumas into his office and went over his resume. Piquette introduced him to Assistant Manager Roch Picard and to supervisor Steve Ferrisi. He asked Dumas if he would have any trouble going to the top of the Scream Tower ride. He said that, as far as he was concerned, Dumas was hired, but that he had to go through the human resources process, including a background check and drug check. He then escorted Dumas to the human resources department office to complete the rest of the necessary paperwork. Dumas was not interviewed by any of the current supervisors.

Director of Maintenance Charles Davis testified that supervisors do not have authority to make a job offer to any applicant or to conduct job interviews without the presence of management personnel. He testified that supervisors do not play an active role in the interview process, but managers will occasionally ask one of the supervisors to sit in on an interview or to give an opinion. Both supervisors and employees sometimes recommend their friends for a job, but they do not play a role in the process. Davis testified that supervisors play no role in setting the pay scale for new employees.

As for Piquette’s role in hiring Dumas, Davis testified that, at one point, Piquette had authority to interview prospective employees. He was not, however, authorized to make a job offer or actually hire. Only Davis is authorized to hire employees, and his signature is required before anyone is hired. Davis testified that Piquette was given this authority on a trial basis, but the experiment ended over a year ago when it appeared that Piquette was not adequately screening potential employees. At that time, responsibility for interviewing job candidates was returned to the department manager.

Supervisor Steve Ferrisi testified that he has no authority to hire or involvement in the hiring process. Mechanic Al Legare testified that he was hired in 2000 by Roch Picard and by Picard’s former assistant, Brian O’Leary.

⁸ The following evidence concerns the supervisors’ authority with respect to full-time (year-round) employees. The role of supervisor Chris Ardizoni with respect to the seasonal employees in the water park will be discussed below.

⁹ Piquette was the second ride mechanic supervisor for the northern end of the park until his departure two months prior to the hearing.

Assignment of tasks and responsible direction

The ride maintenance group performs various types of work. In the off-season, the mechanics do planned rehabilitation work on the rides and new construction. When the park is open, the mechanics perform daily morning inspections of each ride. Work is also generated when someone from the park's operations department submits a list of needed repairs on a maintenance request form.¹⁰ Finally, the mechanics answer "ride calls." This refers to calls on the radio for assistance with rides due to mechanical difficulties that arise during the course of the day.

Each morning, Assistant Manager Roch Picard holds a 15-minute meeting that is attended by supervisors Smith, Prejsner, Ferrisi, and Ardizoni, as well as the mechanics and water technician. At the meeting, Picard assigns projects and repairs to the appropriate supervisors and mechanics. Davis testified that Picard also talks to the employees at the end of the day to discuss how much more work is left on each repair, and Picard takes this into consideration in making assignments for the following day.

After the morning meeting, when the park is open, the mechanics inspect each ride for safety issues. The supervisors make sure that the rides are inspected and help out if a mechanic has a problem. Every ride has a manual which sets forth what items must be inspected on a daily, weekly, and monthly basis.

The inspecting mechanic must be "signed off" on the ride, which means a supervisor considers him to have sufficient training and knowledge of the ride to be permitted to inspect it on his own.¹¹ Ferrisi testified that he trains employees to inspect rides by using a training manual prepared by Bissonette, the ride maintenance division manager, which outlines step-by-step inspection procedures. Picard and Bissonette usually have confidence in Ferrisi's decision that a mechanic is ready to be signed off, although on an ongoing basis Picard and Bissonette randomly audit mechanics while they are doing inspections to make sure they are doing them properly. There are 53 rides in the park. Most mechanics are signed off on multiple rides, and more than one mechanic may be signed off on a particular ride. Legare, for example, is signed off on the majority of the rides in the northern end, but not all of them.¹² Ferrisi is signed off on 35-40 rides, but only maintains six on a daily basis. Some newer mechanics are not yet signed off on any rides.

¹⁰ Bissonette distributes the request forms to the appropriate assistant manager, depending on what is needed, whether carpentry, ride maintenance, or electrical work.

¹¹ The supervisor and mechanic sign a book indicating that the mechanic is now capable of inspecting a given ride.

¹² Legare testified that it would probably take a full season to become signed off on any particular ride. Some rides are easier to work on than others, but the majority are fairly complicated.

Mechanic Todd Dumas testified that the mechanics have a basic group of rides that they work on every day, although they are trained on and help with as many other rides as possible.¹³ Dumas testified that supervisors Ferrisi or Prejsner tell him which rides to inspect, but he also testified that no one instructs him to inspect the Batman ride and a ride called the Mind Eraser, two rides that he ordinarily inspects. Mechanic Al Legare testified that he normally inspects the Flashback ride, although not every day. Legare and mechanic Robert Farris normally inspect the Sky Ride. Farris testified that Picard assigned the Sky Ride to him. Legare testified that Picard does not assign the inspections. If there is a supervisor on duty, he normally assigns the inspections to the mechanics. If neither supervisor is available, the mechanics figure out on their own which inspections they will do. If Legare finishes his inspection early, he goes to help one of the other mechanics with an inspection. Ferrisi testified that nobody specifically tells the mechanics which rides to inspect; most of the staff have been there for years and know which rides they inspect.

After the morning inspections are over, the mechanics perform the repairs that Picard has assigned at the morning meeting, or the supervisors may assign work to them. Dumas, Farris, and Legare testified that their supervisors regularly pull them off assignments that Picard has made and send them to assist another mechanic or do another job. The supervisors reassign them to jobs that may be short or may take a day or several days. Farris testified that this happens once or twice a week. Legare conceded that he may not know if his supervisor was directed by Picard to reassign him.

Supervisor Steve Ferrisi testified that Picard assigns the repairs and other projects that the mechanics work on after the inspections are done. Picard keeps a running list of projects to be done, picks a crew, and puts them to work. If an employee completes a job and asks Ferrisi what's next, Ferrisi looks at the list Picard has made or they ask Picard where he wants them to go next. In the case of a repair to a ride, the mechanic who is most familiar with the ride, who may not be a supervisor, takes the lead in coordinating the crew. As for pulling mechanics off one job and sending them to another, Ferrisi testified that any mechanic or supervisor may request help on a job if they need it by calling Picard on the radio. He never tells mechanics to move to another job unless Picard has told him to.

As noted above, the maintenance employees also respond to ride calls. If there is a problem with a ride, the ride operator calls the person in charge of overall maintenance for the shift.¹⁴ The person in charge during the day shift is usually a manager or assistant manager, such as Bissonette, Jenks, or Picard. A supervisor from the mechanical,

¹³ It appears that Picard's morning assignments are based to some degree on which rides the mechanics normally take care of. For example, Picard would assign repairs of the Sky Ride to mechanic Robert Farris, to do along with his usual morning inspection of the Sky Ride.

¹⁴ This person is referred to as the "910," which apparently refers to the radio frequency.

electrical, or carpentry shop may be the person in charge for the night shift.¹⁵ The person in charge determines whether the problem calls for a mechanic, electrician, carpenter, or communications technician and radios the lead person on duty for that shop. If there is a supervisor on duty, the supervisor is the lead person for the shop, but a mechanic or an electrician may serve as the lead mechanic or lead electrician in the absence of a supervisor. The supervisor or other lead person then assigns the job to a particular mechanic or electrician. Ferrisi testified that he assigns such jobs to whichever mechanic is most familiar with the ride and sometimes assigns the task to himself. Dumas testified that ride calls for the Batman ride or the Mind Eraser ride are routinely assigned to him, because those are the rides he takes care of and inspects daily.

The three supervisors inspect rides themselves and work side-by-side with the other mechanics on repairs. In the off-season, the supervisors prepare a list of appropriate rehabilitation tasks, based on the ride manuals and manufacturers' recommendations. They present the list to Picard, who refines it, and passes it along to Bissonette and Davis.

Supervisor Chris Ardizoni and water technician Ronald Mesick are responsible for maintaining the water park at Six Flags, which includes water slides and pools. They both attend the morning meeting for purposes of roll call, but Picard does not tell them what to do. Mesick testified that Ardizoni directs his work and tells him what to do each day. Ardizoni, who has worked in the water park for four years, essentially runs the water park and knows what needs to be done. Ardizoni and Mesick work side by side and do similar work. During the off season, the two of them unplug, winterize, and refill all the pools. They also rehabilitate the filters, pumps, and plumbing systems for the pools. When the park is open, the two of them perform daily, weekly, and monthly inspections in the water park as required by a manual.

Douglas Malley is a communications technician, but he has been assigned to assist the electricians on a temporary basis since February 28, 2005. Malley testified that each morning, Don Donahue, the assistant manager for the electrical group, meets with the electricians to go over the work for the day and tells them which coaster ride they will be working on that day. The first week Malley worked with the electricians, he worked with supervisor Mike Fleury and other electricians on the rehabilitation of the Superman coaster, and after that Donahue sent him to work with supervisor Al D'Amours and three or four other electricians on the construction of a new coaster. Once he arrives at the coaster, the supervisor will ask Malley to do a certain job. D'Amours has been the primary one to give him assignments on a daily basis at the new coaster. D'Amours has told him to pull cable, lay pipe, pull wires for the lighting on the perimeter of the ride, and to lay conduit in which to run the cable.¹⁶ D'Amours also has the other electricians

¹⁵ Although it was not entirely clear from the record, it appears that unit employees may, on occasion, also serve in the capacity of "910."

¹⁶ Malley, who is not an electrician, knows how to do this because the communications technicians also pull telephone cables and fiber cables and lay pipe.

assign jobs to Malley. The other electricians, including master electrician Bob Osgood and electrician Mark Zielinski, have also directed him to perform tasks such as pulling wire and laying conduit. Malley testified that all levels of electricians tell him what to do, as he is the “low man,” so he does whatever they need done.

There is no record evidence regarding supervisor Scott Moquin’s role in assigning work to the carpenters. Davis testified that the carpenters and electricians are not assigned to specific rides. Those groups just divide up the work.

Scheduling

During the off-season, the mechanics work five eight-hour days. When the park is open, the mechanics work 48 hours per week, including two double shifts of 16 hours from 6 a.m. to 10 or 11 p.m. and some additional eight-hour shifts.

Davis testified that he and the manager decide the number of employees who will be scheduled for the first and second shifts.¹⁷ The supervisors are instructed to put names into the schedule to fit everyone’s needs. Ferrisi testified that Bissonette tells them that he wants a certain number of mechanics on in the morning to do inspections and a certain number in the evening to close.¹⁸ He testified that “we” fill in the blanks with the names. Because most employees are used to working certain shifts, they try to roll over the previous year’s schedule year after year and not change it too much.

Legare testified that for the last two or three years, supervisors Tom Prejsner and Steve Ferrisi have made the schedule for the mechanics. One time in 2003, Legare and five or six other mechanics were in the room with Prejsner and Ferrisi as they developed the schedule on a computer. They all wanted to change things around. Legare and mechanic Robert Farris asked to switch their Saturday and Sunday shifts. The supervisors accommodated their request, as well as the request of another mechanic for particular days off. They all participated in the discussion until the schedule worked. Legare testified that he would not know if Picard or Davis approved the schedule.

¹⁷ Although Davis did not specify, it appears that he was referring to the schedule for the mechanics when he testified about scheduling issues. There is no record evidence regarding the schedules for the water technician or carpenters nor any evidence that their supervisors play any role in scheduling their hours. Mechanic Al Legare testified that the electricians have a revolving schedule and do not always have the same days off, but there is no evidence as to whether their supervisors play a role in setting their schedules.

¹⁸ This testimony was corroborated by the Petitioner’s witness, Legare, who testified that, one day in the beginning of 2004, he heard Bissonette tell Prejsner and Ferrisi that he wanted 14 mechanics on in the morning to do inspections and only four to five on at night for calls. Bissonette said that he did not care what they had to do to make it work.

Mechanic Robert Farris testified that one day in 2004, Prejsner was working on his computer and told Farris he was working on the schedule for the 2005 season.¹⁹ He said they were trying to have more mechanics on to do inspections. Prejsner said they would work six days a week and have one day off. Farris told him that the mechanics would probably like to have their two days off and that he did not think that schedule would work. Prejsner told him that is what he was told to do, and that is what he did. One day in March 2005, in Picard's office, Prejsner said he was working on a new schedule where everybody would get two days off.

Davis testified that, on one occasion, when the supervisors showed him the schedule, one mechanic had only one day off. Davis asked the supervisor to change the schedule so that the mechanic had two days off.²⁰

Overtime and time off

Davis testified that only he can authorize overtime and that supervisors have no authority to do so. Typically, a manager or assistant manager recommends overtime, although a request to work overtime could also come from an employee who has not yet finished a job. Sometimes the managers tell the supervisors that they need to have everyone stay late to complete a job.

Mechanic Al Legare testified that, last year, supervisor Steve Ferrisi told him to stay late to put a chain in a ride called the Mind Eraser. It was not a request. Legare worked until 5:30 pm, instead of going home at 2:30 pm, when his shift normally ended. Legare testified that Ferrisi was probably given the job and it was up to him to select a mechanic, which would mean a mechanic who was qualified and who did not have to work a double shift the next day. Ferrisi gave them all the next day off, but Legare does not know if Picard instructed him to do so.

Ferrisi testified that he has no authority to assign overtime work. If higher managers direct overtime work, he offers the work to employees, asking if anyone wishes to stay for overtime work. He just passes the word along. Regarding Legare's testimony about the incident involving the overtime work on the Mind Eraser, Ferrisi testified that he does not recall the incident, that he has no authority to grant employees days off and has never done so.

¹⁹ Other than this testimony, the record does not reveal how often the supervisors create a new schedule, e.g., whether they ordinarily create a new schedule for the mechanics every week, every month, every season, or every year.

²⁰ Davis did not mention the names of the supervisors or discuss the time-frame of this incident, but it appears that he was discussing the same incident involving the schedule for the 2005 season that Farris testified about. Davis also testified that he originally asked for two schedules, a six-day schedule and a five-day schedule, and then decided that the first schedule would not work at all.

Mechanic Robert Farris testified that supervisor Tom Prejsner directs him to work overtime two or three times a year. One time two years ago, Prejsner issued a directive to work overtime putting up a ride called the Scream Tower. Farris testified that he does not know if Prejsner was directed by someone else to have the mechanics work overtime. Regarding that incident, Davis testified that Prejsner may have been the person who asked Farris to work overtime, but Prejsner would have had to have permission from his assistant manager, or his manager, or Davis.

Supervisors play no role in granting vacation requests. Employees who wish to take time off submit a vacation request form to their assistant manager, who evaluates the request in light of the schedule. In the case of the ride mechanics and water technician, Picard, Bissonette, and Davis sign the vacation request forms.

Promotion

Mechanics are first hired into the position of “mechanic B.” After serving two years as a mechanic B, a mechanic may progress to a higher-paying “mechanic A” position by passing a written test. Mechanic A Todd Dumas testified that former supervisor Kevin Piquette gave him the test. Dumas did not know who determined his score. Dumas testified that, on one occasion, he observed Piquette typing test questions that he obtained from another organization into the computer, and Piquette said he was trying to put together a test.

Davis testified that he brought the mechanics’ test from another park where he used to work and that “we” refined it a couple of times. He testified that the assistant manager designates someone to administer the test. At one point this job was given to Piquette, but he was not adept at it, so now the manager handles the testing. Davis testified that a manager, either Bissonette or Jenks or Johnson, scores the exam. Davis testified that there is an exam for the paint shop as well as for the mechanics.²¹

Supervisor Steve Ferrisi testified that he has no authority to promote employees nor any involvement in the process. As for the role of supervisors in any promotions to supervisor positions, the record reveals only that there were no supervisors in place at the time that Chris Ardizoni and Scott Moquin were themselves promoted to supervisor.

Performance reviews and wage increases

Managers and assistant managers complete employees’ annual performance reviews. Picard completes the performance reviews for the mechanics and the water technician. Water technician Ron Mesick testified that Picard does not personally observe his work and that only his supervisor, Chris Ardizoni, would be in a position to have knowledge of his work. He testified that he imagines, therefore, that Ardizoni

²¹ The record does not reveal whether passing the test given to paint shop employees may result in a promotion or whether there are any tests for any other classifications of employees in the maintenance shop.

would have to talk to Picard about his assessment, but that he has no clue if Ardizoni actually does discuss it with Picard.

Davis testified that employees begin the annual review process by completing a self-assessment, which they give to their assistant manager. The assistant manager then completes a management assessment form which is sent to the manager and, finally, the human resources department. The assessment is ultimately returned to the assistant manager, who presents it to the employee. Davis testified that supervisors play no formal role in the assessment process, although their opinions may be solicited. He was unaware of any assistant manager asking a supervisor for his opinion of an employee's work for an assessment, although he could not say it has not happened.

Davis testified that the annual assessments affect wages based on a chart maintained in the human resources department and that there is a point system for attendance. He testified that supervisors have no authority to grant wage increases.

Discharge and discipline

Davis testified that employees may be discharged for grievous infractions such as fighting or intoxication and that the Six Flags human resources department must be involved in such cases. He testified that no supervisor has ever discharged a full-time employee or recommended the discharge of a full-time employee.²²

Six Flags employs a progressive discipline system for minor infractions. Davis testified that only he, the managers, and the assistant managers play an active role in disciplining employees. He testified that supervisors are not authorized to sign disciplinary notices, although they may give a witness statement regarding the facts that lead to discipline. Davis testified that if a supervisor told an assistant manager that an employee should be "written up," the supervisor's recommendation would be taken into account, but no more than anyone else's recommendation.

On May 17, 2003, Assistant Manager Roch Picard issued a verbal warning to mechanic Todd Dumas for being late.²³ On November 21, 2003, Dumas received a written warning for absenteeism that was signed by his former supervisor, Kevin Piquette, as well as a manager.²⁴ On February 6, 2004, Dumas received a final written warning for sleeping on the job, which referenced the previous two warnings. The final

²² This was an apparent reference to year-round employees. Davis did not explain if there was any difference in the supervisors' authority with respect to seasonal employees.

²³ The verbal warning was documented on a "corrective action report" that was submitted into evidence.

²⁴ The name of the manager who also signed the warning is not legible. The record does not reveal how it is that Piquette came to sign a written warning, notwithstanding Davis' testimony that supervisors are not authorized to sign disciplinary notices.

warning was signed by both Picard and Bissonette, and supervisor Steve Ferrisi signed it as a witness.²⁵

Mechanic Al Legare testified that none of the current supervisors has disciplined him and that supervisor Brett Smith once told him he would never write anybody up.²⁶ He testified that, on one occasion, Tom Aiger, who used to work for “Safety,” instructed former supervisor Piquette either to write him up or to give him three days off without pay for getting off a ride before it came to a complete stop. Piquette wrote him up and did not give him three days off.²⁷

Water technician Ron Mesick testified that, last year, supervisor Chris Ardizoni issued him a verbal warning because he accidentally left the water that is used to fill the pool turned on overnight. He testified that Ardizoni told him that he had been instructed to give Mesick a written warning, but that he was going to give him a verbal warning.²⁸ There is no record evidence that any of the other current supervisors has ever issued discipline to an employee or effectively recommended discipline.

Adjustment of grievances

Six Flags maintains a “Guarantee of Fair Treatment” policy under which employees are encouraged to discuss any concerns or complaints about work-related issues with their supervisor. Under the policy, an employee’s first step is to discuss the situation with his or her “immediate supervisor.” Water technician Ron Mesick testified that he has never been told who his immediate supervisor is for purposes of the policy.²⁹ The maintenance employees attend an annual mandatory seminar on harassment in the workplace. Mechanic Al Legare testified that the employees are told to go to their immediate supervisor first if there is a problem with harassment, but their immediate supervisors have not been identified.

²⁵ Ferrisi testified that he has no authority to discipline or discharge employees and has no involvement in the process. He was not asked to explain his role in this warning given to Dumas.

²⁶ He testified that Director Chuck Davis once wrote him up for smoking.

²⁷ The warning was not submitted into evidence.

²⁸ No warning was submitted into evidence, and Mesick testified that Ardizoni has never given him a written disciplinary notice. It appears, therefore, that Ardizoni simply told Mesick that he was issuing him a verbal warning and did not document the verbal warning on a disciplinary form, as Picard did when he issued a verbal warning to Dumas.

²⁹ Mesick testified that when he was transferred from his job in the sign shop to his current job as water technician, he asked the manager of the sign shop, Jerry Johnson, and then Chuck Davis why he was being transferred, because he was concerned that he had been transferred because of dissatisfaction with his work as a sign painter. There is no supervisor in the sign shop.

Mechanic Robert Farris testified that, one day in the summer of 2004, former supervisor Piquette asked him to inspect the rest of the rides. Farris told Piquette that he could not, because he already had too many rides to inspect, but he performed the extra inspections anyway. He waited until the next day when his supervisor, Brett Smith, was in, in order to follow the chain of command in making a complaint about Piquette.³⁰ He told Smith what the problem was, and Smith said he would see what he could do. Smith called him into Picard's office about two or three days later. They discussed the problem, but Farris did not know if the matter went any further.

Davis testified that if maintenance employees wish to dispute their wage increase, they must first go to their assistant manager, followed by their manager, the director, and the human resources department. Supervisor Steve Ferrisi testified that when employees come to him with complaints regarding another employee or a work assignment, he suggests that they talk to Assistant Manager Picard.

Transfers, layoff, and recall

Davis testified that supervisors play no role in transferring employees between the groups within the maintenance division, and he is unaware of any supervisor recommending a transfer in his seven years at the park. Supervisor Steve Ferrisi testified that he has no authority to transfer employees and no involvement in the process.

Davis has transferred two employees between groups. He transferred Ron Mesick from a sign painter position to a water technician position without consulting water park supervisor Chris Ardizoni. Davis recently reassigned communications technician Douglas Malley from the communications group to the electrical group on a temporary basis to assist with the construction of a new attraction. The supervisors in the electrical group played no role in the decision. There have been no transfers between the maintenance division and other divisions within the park.

Six Flags has never had a layoff or recall. Davis testified that none of the supervisors has authority to lay off or recall employees. In the case of a layoff, employees would be selected for layoff based on their performance evaluation and job classification. He would seek input only from assistant managers and managers.

Secondary factors

A few years ago, Six Flags changed the title of the disputed individuals in the ride mechanic shop from "lead mechanic" to "supervisor." There was no change in the job duties associated with the position when the title changed from "lead mechanic" to "supervisor." Davis testified that the job is a project coordinator/foreman type of position and that the supervisors are the most senior mechanics.

³⁰ Farris testified that he considered Smith to be his immediate supervisor but he also testified that Piquette was his supervisor.

The supervisors' job descriptions state that they "delegate" and that they "supervise" work crews at job sites and ensure that assignments are completed on time. As noted above, the supervisors work side-by-side with the petitioned-for employees performing maintenance work.

The supervisors and the petitioned-for employees are all hourly paid. The starting rate for supervisors is about \$2 per hour higher than the starting rate for mechanics, although some of the petitioned-for employees earn more than the supervisors, either because of their greater longevity or because of their status as licensed electricians.³¹ Supervisors are eligible for bonuses, although there have been no bonuses in the last few years. The record does not reveal whether the petitioned-for employees or assistant managers and managers are also eligible for bonuses. All managers, supervisors, and employees at Six Flags receive the same vacation and other benefits.

The supervisors wear the same uniforms as the mechanics. The record does not reveal if the assistant managers or managers wear a uniform as well. Around the first of the year, Bissonette notified the employees at a meeting that only supervisors and assistant managers would be permitted to take parts out of the tool crib. At the morning meeting, Picard writes down the time that each person arrives, including the supervisors.

Analysis

Pursuant to Section 2(11) of the Act, the term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, where the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. To qualify as a supervisor, it is not necessary that an individual possess all of the powers specified in Section 2(11) of the Act. Rather, possession of any one of them is sufficient to confer supervisory status. Chicago Metallic Corp.³² The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification. New Fern Restorium Co.³³ The burden of proving supervisory status rests on the party alleging that such status exists. NLRB v. Kentucky River Community Care³⁴ The Board will refrain from construing supervisory status too broadly, because the inevitable consequence of such a construction is to remove individuals from the protection of the Act. Quadrex Environmental Co.³⁵

³¹ Apparently supervisor Mike Fleury, who is the supervisor for the electricians, is not himself a licensed electrician.

³² 273 NLRB 1677, 1689 (1985).

³³ 175 NLRB 871 (1969).

³⁴ 532 U.S. 706, 121 S.Ct. 1861, 167 LRRM 2164 (2001).

³⁵ 308 NLRB 101, 102 (1992).

As noted above, the Petitioner asserts that the seven supervisors are statutory supervisors by virtue of their authority to hire, assign work and direct employees, schedule employees, assign overtime, discipline, adjust grievances, and reward employees, and because their title is “supervisor.” I find that the Petitioner has failed to meet its burden of proving that the supervisors exercise Section 2(11) authority.

Hiring

The evidence is in conflict as to whether former supervisor Kevin Piquette actually hired mechanic Todd Dumas, in light of Davis’ testimony that Piquette was not authorized to do so. It is uncontroverted, however, that whatever authority Piquette did have with respect to the hiring process ended over a year ago. More important, the record is clear that the seven current supervisors have no authority to hire or effectively recommend the hire of full-time employees, and there is no evidence that any of them have ever done so.

Assignment and responsible direction

The Petitioner has failed to demonstrate that the seven supervisors use independent judgment in assigning work to or responsibly directing the unit employees. With respect to the three ride mechanic supervisors, the record reveals that the assistant manager, Picard, makes daily assignments at the morning meeting. Although the supervisors may send mechanics from one job to another during the course of the day, supervisor Ferrisi testified that he does so based on instructions from Picard. It appears that no independent judgment is required to assign mechanics to perform daily inspections of the rides, since each mechanic ordinarily inspects the same ride or rides every day, and the supervisors may only select a mechanic who has been signed off on the ride. Nor does it require independent judgment when the supervisors assign ride calls, since they assign most calls to whichever mechanic ordinarily inspects and is most familiar with the ride at issue. KGW-TV³⁶ (assignment based on assessment of employees’ skills when the difference in skills are well known is routine); Quadrex Environmental Co.³⁷ (assignment by leadmen of tasks to work crew employees demonstrates nothing more than the knowledge expected of experienced persons regarding which employees can perform particular tasks).

There is no record evidence concerning the role of supervisor Scott Moquin in assigning work to the carpenters. As for the electricians, the record reveals that the assistant manager assigns them to a crew each day, and there was no evidence regarding the manner in which the two supervisors assign tasks to the electricians. I find that evidence of the supervisors’ role in assigning tasks to Doug Malley, a non-electrician

³⁶ 329 NLRB 378, 382 (1999).

³⁷ 308 NLRB 101 (1992).

who has been assigned to that unit on a temporary basis, is insufficient to establish that they use independent judgment in assigning tasks to the electricians whom they usually direct. I note, in any event, that both supervisors and electricians in the unit have assigned tasks to Malley. The record is similarly insufficient to establish that water park supervisor Ardizoni uses independent judgment in determining which tasks to assign to water technician Mesick. North Shore Weeklies³⁸ (press supervisors are not statutory supervisors where the record does not reveal the particular acts and judgments that make up their direction of work).

Scheduling

The supervisors' role in scheduling employees for work does not constitute Section 2(11) authority. I note that only two of the supervisors, Prejsner and Ferrisi, participate in scheduling employees; there is no evidence that the remaining five supervisors play any role in scheduling. As for the role of Prejsner and Ferrisi, the record reveals that Davis or Bissonnette tells them how many employees to schedule for each shift and also instructs them as to how many days per week each employee should be scheduled to work. Prejsner and Ferrisi merely "fill in the blanks," which the Board has found to be a clerical function. Boston Medical Center.³⁹ (Board has consistently held that preparing schedules according to the employer's predetermined requirements is tantamount to filling in the blanks and is clerical, not supervisory). Further, it appears that the schedule is not changed much from year to year and that the mechanics meet as a group to cooperatively work out any requested changes.

Overtime and time off

The evidence does not establish that the supervisors' role in the assignment of overtime confers supervisory authority. Thus, although Legare and Farris testified that Ferrisi and Prejsner have directed them to work overtime and that Ferrisi even gave employees the next day off on one occasion, they were unaware whether the two supervisors had been instructed to do so. The record is clear that Davis must approve all overtime and that even managers and assistant managers must obtain Davis' approval for overtime work.

Although supervisors may play a role in selecting employees for pre-approved overtime, there is no evidence that their role in selecting employees for overtime work is any different than it is for selecting employees for any other type of assignment.⁴⁰ Their choice is limited to employees who are present, who are not working a double shift the following day, and who are qualified to work on the particular ride at issue.

³⁸ 317 NLRB 1128 (1995).

³⁹ 330 NLRB 152, 165 fn. 30, Regional Director's Decision and Order at 203 fn. 153 (1999).

⁴⁰ I note that there is no evidence that either of the electrical supervisors, the carpentry supervisor, or the water park supervisor have ever assigned overtime work.

Finally, the Board has held that authority to request, but not compel, employees to work overtime does not confer supervisory status. Riverchase Health Care Center.⁴¹ The evidence on this point is in conflict in that supervisor Ferrisi testified that he asks if anyone wishes to stay for overtime work, while mechanic Legare testified that, on one occasion, Ferrisi told him to work overtime, and it was not a request. Assuming that Ferrisi did order Legare to work overtime on one occasion, I find that one supervisor's exercise of that authority on one occasion is too sporadic to establish the existence of Section 2(11) authority. Illinois Veterans Home at Anna L.P.⁴² (authority to require employees to work overtime is limited and there is no evidence that such authority is regularly exercised).

Discipline

The Petitioner has failed to demonstrate that supervisors have authority to impose discipline. Supervisor Steve Ferrisi testified that he has no authority to do so, and there is no evidence that Ferrisi, Prejsner, Smith, D'Amours, Fleury, or Moquin have ever disciplined any employee.

The evidence submitted by the Petitioner on this point consists of two written warnings issued by former supervisor Piquette and one verbal warning issued by supervisor Chris Ardizoni. I find, at the outset, that the three incidents are too sporadic to constitute evidence of statutory authority. Further, the Petitioner has failed to demonstrate that Piquette and Ardizoni either issued the discipline on their own or effectively recommended the discipline. In this regard, Piquette's written warning to Dumas was co-signed by a manager, and there is no record evidence concerning Piquette's or the manager's role in its issuance, i.e., whether the manager independently investigated the matter or instructed Piquette to issue the warning. With respect to the other written warning issued by Piquette, I note that the warning itself was not submitted into evidence, and that the Petitioner's witness testified that another individual instructed Piquette to issue it. As for the verbal warning issued by Ardizoni, it appears that he was instructed by a superior to issue a warning of some kind and that, unlike the verbal warning issued by an admitted supervisor, Ardizoni's warning was not even reduced to writing. Further, the Board has held that the issuance of verbal reprimands such as this is too minor a disciplinary function to constitute supervisory authority. Ohio Masonic Home.⁴³

⁴¹ 304 NLRB 861, 864 (1991).

⁴² 323 NLRB 890, 891 (1997).

⁴³ 295 NLRB 390, 394 (1989).

Adjustment of grievances

The Petitioner has failed to meet its burden to establish that the seven supervisors have authority to adjust grievances. Although it is Six Flags' policy that employees bring complaints about harassment and other work-related issues to their "immediate supervisor," there is no evidence that the unit employees have ever been told who their immediate supervisor is for purposes of these policies. More importantly, the Petitioner has presented no evidence that any supervisor has ever actually adjusted a grievance or effectively recommended its adjustment. Birmingham Printing Pressmen's Local Union #55⁴⁴ (there was no evidence as to substance of the foreman's alleged authority to adjust grievances, where he had never done so). The Petitioner presented evidence of only one instance in which an employee brought a complaint to a supervisor, and in that instance supervisor Smith merely brought the employee to Assistant Manager Picard to discuss his complaint.⁴⁵ Supervisor Ferrisi testified similarly that he suggests that employees talk to Picard whenever they bring a work-related complaint to his attention.

Authority to reward

The Petitioner maintains that supervisors perform a role in evaluating employees and that the annual assessments are used as a basis for determining wages. The only record evidence of the supervisors' role in evaluations is water technician Ron Messick's testimony that, because supervisor Chris Ardizoni is the only person with direct knowledge of his work, Ardizoni must talk to Picard about Messick's annual assessment. The Petitioner also relies on Davis' testimony that he could not say that supervisors have not been consulted about employees' assessments, although he was unaware of any time that an assistant manager had actually solicited a supervisor's opinion. I conclude that this testimony is far too speculative to demonstrate that supervisors play any role in the assessment process, much less that they effectively recommend wage increases.

Contrary to the Petitioner's contention, the role of the supervisors in the mechanical shop in "signing off" the mechanics as qualified to inspect rides does not constitute authority to reward them. The Petitioner argues that employees who are not signed off for a sufficient number of rides obviously face some risk with respect to employment. The Board has found that a foreman's training and testing of employees to determine their competency does not, without more, establish supervisory status. F.A. Bartlett Tree Expert Co., Inc.;⁴⁶ Hogan Manufacturing, Inc.⁴⁷ I also note that there is no

⁴⁴ 300 NLRB 1 (1990).

⁴⁵ Contrary to the Petitioner's contention, the fact that Smith told the employee that "he would see what he could do" does not demonstrate that he actually had authority to adjust the grievance, and there is no evidence that he actually did so.

⁴⁶ 325 NLRB 243 (1997).

⁴⁷ 305 NLRB 806 (1991).

evidence that being signed off on a ride leads to any particular reward, nor any evidence that failure to be signed off leads to any particular adverse effect. Further, Picard and Bissonnette randomly audit mechanics while they are performing inspections to make sure they are doing them properly, so that the supervisors' determination that mechanics are ready to be signed off is constantly reviewed by higher managers.

Secondary indicia

It is well settled that possession of the title of supervisor does not in and of itself confer supervisory status under the Act. Hallandale Rehabilitation and Convalescent Center.⁴⁸ Although the supervisors' job descriptions state that the supervisors "supervise" work crews and "delegate," the issuance of paper authority which is not exercised does not establish supervisory status. Crittenton Hospital.⁴⁹ The facts that the supervisors' starting rate of pay is slightly higher, that they are eligible for bonuses, and that only supervisors and managers are authorized to take parts from the tool crib are secondary indicia, which are insufficient by themselves to establish supervisory status when there is no evidence presented that these individuals possess any one of the several primary Section 2(11) indicia. Ken-Crest Services.⁵⁰

Supervisor Chris Ardizoni's Authority with Respect to Seasonal Employees

About five seasonal pool sweepers report to supervisor Chris Ardizoni when the park is open.⁵¹ The pool sweepers report to water technician Ron Mesick when Ardizoni is not present. They are all laid off at the end of the season. Ardizoni manages the schedules of the seasonal employees and determines their days off. He has no authority to approve overtime for the seasonal employees; only Davis has authority to do so.

Davis testified that Ardizoni and Plumbing/Landscaping Group Assistant Manager Bill Mahoney attend job fairs together to interview potential seasonal employees. Ardizoni seeks to hire pool sweepers, while Mahoney seeks to hire landscapers and employees to wash down the midway. It appears that Ardizoni interviews the applicants for pool sweeper positions by himself. He offers them a seasonal position. He forwards some paperwork to the human resources department recommending that the applicant be hired, and the human resources department forwards the paperwork to Davis, who must approve the hire and the wage level.⁵² Davis testified that if there is a written record of Ardizoni's opinion of an applicant, it would be kept in

⁴⁸ 313 NLRB 835, 836 (1994).

⁴⁹ 328 NLRB 879 (1999).

⁵⁰ 335 NLRB No. 63, slip op. at 3 (2001).

⁵¹ No seasonal employees report to any of the other supervisors at issue.

⁵² Unlike Ardizoni, Mahoney may hire seasonal employees without Davis's signature.

the human resources department, but he does not ask for it unless there is a reason to be concerned. He testified that there is an assembly line quality to the process, that Ardizoni is trying to hire seasonal employees in some quantity, and that he does not have to send much to human resources. Davis does not recall ever rejecting a seasonal employee recommended by Ardizoni. The pool sweeper job is not complicated, so Davis will not object unless he knows the applicant has been terminated previously or he has reason to doubt the applicant can vacuum a pool. The record does not reveal whether Ardizoni has ever rejected an applicant.

Davis testified that Ardizoni has authority to recommend to him or Picard that a seasonal employee be terminated, although there is no record evidence that he has ever made such a recommendation, or if he has, that it was followed. Water technician Mesick testified that he once observed a seasonal employee act in a rude manner toward a lifeguard who had asked him to make a repair. Mesick called Ardizoni, who was not working that day, to ask what he wanted to do. Ardizoni told him to start a “write-up” by filling out the “description of incident” section in the disciplinary form. Mesick left the form on Ardizoni’s desk. He had no further conversation about it with Ardizoni and does not know if Ardizoni ever issued a warning to the seasonal employee.

Analysis

Based on this record, it remains unclear whether Ardizoni uses independent judgment or merely routine judgment in recommending the hire of seasonal employees to Davis. The record is also unclear as to whether whatever supervisory authority Ardizoni may exercise over these nonunit employees is a primary or ancillary part of his duties. See Detroit College of Business⁵³ and Union Square Theatre Management, Inc.⁵⁴ Accordingly, I shall permit Ardizoni to vote under challenge if I direct an election in this matter at any time in the future.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time maintenance department employees employed by the Employer at its Six Flags facility in Agawam, Massachusetts, but excluding office clerical employees, guards, and supervisors as defined in the Act.

⁵³ 296 NLRB 318 (1989).

⁵⁴ 326 NLRB 70 (1998).

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by Friday, **June 10, 2005**. You may also file the request for review electronically. Further guidance may be found under E-Gov on the National Labor Relations Board web site: www.nlr.gov.

Rosemary Pye, Regional Director
First Region
National Labor Relations Board
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 27th day of May, 2005.

c:\documents and settings\lstern\local settings\temporary internet files\olk15\rc21889 (six flags).doc